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Deterring and Preventing Rape and Sexual Slavery During Periods of Armed Conflict

Sarnata Reynolds*

The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.¹

Introduction

Since the end of the nineteenth century and throughout the twentieth century, many countries have agreed to abide by minimum standards of treatment for combatants,² civilians during international armed conflict,³ and people caught in internal conflicts.⁴ These standards tend to reflect an overwhelmingly male-

* J.D., University of Minnesota Law School, expected 1999; B.A., University of Minnesota, 1995. I would like to thank Professor David Weissbrodt for allowing me access to his extensive knowledge and materials on the United Nations, Ethan Lauer for his considerable time and thoughtful comments, David Sullivan for his suggestions and Rebecca Snyder and all the staff who cite-checked this piece for their substantial contribution to the details of this Article. I am especially thankful to my parents, Bridget and Carl Reynolds, my sisters and my niece and nephew for their continuous support and encouragement.

1. TELFORD TAYLOR, *THE ANATOMY OF THE NUREMBERG TRIALS* 167 (Alfred A. Knopf 1992) (quoting portions of the opening statement delivered by Justice Robert Jackson, Chief Prosecutor of the Nuremberg war crime trials).

2. See, e.g., *Hague Conventions Respecting the Laws and Customs of War on Land*, Oct. 18, 1907, 36 Stat. 2277 [hereinafter *Hague Conventions*].

3. See, e.g., *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, opened for signature Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (entered into force Oct. 21, 1950) [hereinafter *Geneva Convention*] (providing war-time protection to civilians); *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., pt.1, art.2, U.N. Doc. A/810 (1948) (outlining basic human rights that should be extended to all persons); *Convention on the Prevention and Punishment of the Crime of Genocide*, Dec. 9, 1948, 78 U.N.T.S. 277, (entered into force Jan. 12, 1951) [hereinafter *Genocide Convention*] (confirming that genocide is a punishable crime); *Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts*, June 8, 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1391 (entered into force Dec. 7, 1978) [hereinafter *Protocol I*] (asserting protections of international armed conflict victims).

4. See *Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and*

oriented view of what constitutes a human rights violation.⁵ It is only as the end of this century approaches that human rights, originally assumed to apply to all people, are being restructured to expressly include and recognize the experiences of women in armed conflict. Specifically, many countries now acknowledge the use of rape and sexual slavery⁶ not as the "natural" results of war, but as intricate parts of the structure of war perpetrated against civilians.⁷

In 1995, the United Nations (U.N.) appointed a special rapporteur⁸ to undertake an in-depth study of systematic rape and sexual slavery during periods of armed conflict. In 1996, the rapporteur presented a preliminary report⁹ briefly outlining the practice of rape in war, identifying the applicable human rights documents¹⁰ and addressing the need for individual, state and

Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 609, 16 I.L.M. 1442 (entered into force Dec. 7, 1978) [hereinafter Protocol II].

5. See Charlotte Bunch, *Transforming Human Rights from a Feminist Perspective*, in WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 11, 13 (Julie Peters & Andrea Wolper eds., 1995) (arguing that because men formulated the concept of international human rights, its primary definitions of human rights pertain to those acts men feared, and therefore many of the experiences of women were not considered human rights violations); see also Berta Esperanza Hernández-Truyol, *Sex, Culture, and Rights: A Re/Conceptualization of Violence for the Twenty-First Century*, 60 ALB. L. REV. 607, 610-11 (1997) (noting that excluding women from participation in creating international human rights law resulted in insulating gender-based abuses from public condemnation).

6. Sexual slavery is an accurate term for "the suffering, such as multiple rapes on an everyday basis and severe physical abuse, that women victims had to endure during their forced prostitution and sexual subjugation and abuse in wartime." *Report on the Mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the Issue of Military Sexual Slavery in Wartime*, U.N. ESCOR Commission on Human Rights, 52d Sess., Prov. Agenda Item 9(a), para. 10, U.N. Doc. E/CN.4/1996/53/Add.1 (1996).

7. See Ruth Seifert, *War and Rape: A Preliminary Analysis*, in MASS RAPE 58-65 (Alexandra Stiglmayer ed., 1994) (noting that women were often viewed as a part of the victor's prize because they were considered the property of the conquered).

8. A special rapporteur is an expert appointed to investigate specific topics or situations in particular countries. See FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* 185 (2d ed. 1996). A rapporteur "collect[s] information on human rights violations and prepare[s] annual reports to the Commission [on Human Rights], and if requested, to the General Assembly." *Id.*

9. See Linda Chavez, *Preliminary Report of the Special Rapporteur on the Situation of Systematic Rape, Sexual Slavery and Slavery-like Practices During Periods of Armed Conflict*, U.N. ESCOR Comm. Human Rights, 48th Sess., Prov. Agenda Item 15, U.N. Doc. E/CN.4/Sub.2/1996/26 (1996).

10. The Charter of the International Military Tribunal at Nürnb erg defines acts considered crimes against peace, war crimes and crimes against humanity. See Charter of the International Military Tribunal, reprinted in THE CHARTER AND JUDGMENT OF THE NÜRNBERG TRIBUNAL: HISTORY AND ANALYSIS, app. II, U.N. Doc.

international accountability.¹¹ Section VIII of the rapporteur's report emphasized the importance of deterring and preventing sexual violence during armed conflict and delineated widely accepted international conventions that place obligations on countries to enforce these goals.¹²

This Article will focus on the different tactics available to curb, and ultimately eliminate, the use of rape and sexual slavery during periods of armed conflict. It may seem pointless to discuss tactics available to curb sexual violence against women during armed conflict when such violence frequently occurs during times of peace. This Article tackles sexual violence in war and through military units for two reasons. First, only a strong and clear denunciation of sexual violence at all times will further the eradica-

A/CN.4/5, U.N. Sales No. 1949.v.1 (1949). The systematic use of sexual violence is both a war crime ("ill-treatment . . . or for any other purpose of civilian population of or in occupied territory") and a crime against humanity ("enslavement . . . and other inhumane acts committed against any civilian population, before or during the war") *Id.* at art. 6.

Allied Control Council Law No. 10 defines triable offenses for the cases not pursued by the International Military Tribunal at Nürnberg. *Law No. 10: Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity*, 3 OFFICIAL GAZETTE CONTROL COUNCIL FOR GERMANY, Jan. 31, 1946, at 50, 50-55. It explicitly recognizes the criminal nature of sexual abuse and slavery of women during times of armed conflict. *See id.* at 51.

The Universal Declaration of Human Rights prohibits mass rape during armed conflict through Article 3 (establishing a right to life, liberty and security of person), Article 4 (prohibiting slavery in any form), Article 5 (barring torture, cruel, inhuman or degrading treatment or punishment), and Article 12 (protecting a woman's right to privacy and honor). *See Universal Declaration of Human Rights*, *supra* note 3.

Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women requires states to take steps to implement the equal protection of women, G.A. Res. 180, U.N. GAOR, 34th Sess., U.N. Doc. A/RES/34/180 (1980) [hereinafter *Women's Convention*].

Article 1 of the Declaration on the Elimination of Violence Against Women defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women." G.A. Res. 48/104, U.N. GAOR, 48th Sess., at 217, Supp. No. 49, U.N. Doc. A/48/49 (1993).

In 1992 the Secretary-General to the United Nations identified the practice of mass systematic rape as a method of genocide. *See Report on the Situation of Human Rights in the Territory of the Former Yugoslavia*: U.N. SCOR Comm. on Human Rights, 49th Sess., Agenda Item 97(c), para. 27, U.N. Doc. A/47/666/S/24809 (1992).

11. *See Chavez*, *supra* note 9, at paras. 74-79.

12. *See id.* at paras. 80-82. *See Genocide Convention*, *supra* note 3 (calling upon the U.N. to take action necessary to prevent and suppress acts of genocide).

Article 5 of the Slavery Convention is an agreement by signing parties to undertake "all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery." Sept. 25, 1926, 60 L.N.T.S. 253, 265.

tion of rape and sexual slavery. In peacetime, sexual violence is generally seen as preventable, while in war it is viewed as inevitable with sexual access to the bodies of women regarded as part of the conqueror's prize. In reality, both conceptions may be true. Rape and sexual slavery are preventable if local, national and international governments and organizations commit time, resources and funding to their eradication. Conversely, rape and sexual slavery are inevitable if nothing is done to educate the public about and express intolerance for sexual violence against women. Viewing sexual violence in war as an extension of its incidence in peacetime will create a parallel struggle to advance its eradication during both times. Identifying why sexual violence remains a too frequent occurrence in war builds a nexus with peacetime sexual violence; this would increase awareness of how to confront the attitudes and images that perpetuate violence against women.

Second, because military units are traditionally isolated from other citizens, transforming the military to reflect human rights standards requires education and training from within the system. At first glance, it may be difficult to believe that those involved in war would commit to standards that inhibit the tactics available to propagate war. As the Hague and Geneva Conventions demonstrate,¹³ most countries have long agreed to abide by minimum standards of conduct in war. This Article recognizes such commitments and suggests methods available to further their enforcement regarding sexual violence.

This Article focuses on the United Nations because of its unique ability to require enforcement of treaties prohibiting sexual violence. Part I examines the development of rape and sexual slavery as human rights violations and explores theories for their widespread use in war.¹⁴ Part II suggests that the U.N. should en-

13. See *supra* notes 2-3 and accompanying text (citing the broad acceptance of human rights standards promulgated by the Hague and Geneva Conventions).

14. See *infra* notes 18-37 and accompanying text. Much legal literature addresses the failure of the international community to condemn and prosecute violations of women's human rights in armed conflict. I will guide the reader to these discussions, but will not probe the issues here. See generally Amy E. Ray, *The Shame of It: Gender-Based Terrorism in the Former Yugoslavia and the Failure of International Human Rights Law to Comprehend the Injuries*, 46 AM. U. L. REV. 793 (1997) (arguing that in order to address violations committed against women, both human rights and what constitutes war and peace must be reconceptualized); Theodor Meron, *Rape as a Crime Under International Humanitarian Law*, 87 AM. J. INT'L L. 424 (1993) (examining the international condemnation of systematic rape and explaining the importance of implementing prosecutions through the use of current international conventions and treaties); Hernández-Truyol, *supra* note 5 (declaring that if gender equality is to be realized, a reexamination of how sexual violence against women is defined is necessary); Fionnuala Ni Aolain, *Radical*

courage education and training programs in all countries, but especially in those regions vulnerable to armed conflict.¹⁵ Part III examines why an international presence during armed conflict is imperative to protecting women's human rights.¹⁶ Finally, Part IV addresses the use of international courts to remedy the occurrence of sexual violence during armed conflict, and suggests some improvements when handling cases involving rape and sexual slavery.¹⁷ The Article concludes that decreasing the incidence of sexual violence during armed conflict is possible, but it requires a multilateral and multifaceted commitment to people and programs that will effectively combat it.

I. Rape and Sexual Slavery as Human Rights Violations

A. Prevalence of Sex Crimes in War

The use of rape and sexual slavery during war to terrorize and divide people is well-documented and has deep historical roots. In ancient Hebrew and Greek societies, the victor in war gained the right to rape women who were considered part of the conqueror's "booty."¹⁸ Unfortunately, this century's wartime conduct has followed in the tradition set by ancient armies. The German army in World War I reinforced its dominance by raping women as it conquered villages.¹⁹ In World War II, Japanese soldiers participated in the mass rape of women in China, Korea and the Philippines.²⁰ Many women were enslaved for long periods and suffered multiple rapes, sometimes by sixty to seventy men in a day.²¹ In 1971, Pakistani soldiers raped over 400,000 Bengali women during the nine-month conflict spurred by the Bengali

Rules: The Effects of Evidential and Procedural Rules on the Regulation of Sexual Slavery in War, 60 ALB. L. REV. 883 (1997) (maintaining that substantive legal recognition of sexual offenses would be a token advancement without a drastic re-evaluation of the procedural mechanisms of prosecuting criminal actors); Dorothy Q. Thomas, *Women's Human Rights: From Visibility to Accountability*, 69 ST. JOHN'S L. REV. 217 (1995) (documenting the increased recognition of human rights violations against women over the last decade).

15. See *infra* notes 38-97 and accompanying text.

16. See *infra* notes 98-117 and accompanying text.

17. See *infra* notes 118-192 and accompanying text.

18. See SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 33 (1975).

19. See *id.* at 40-41.

20. See *Report on the Mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the Issue of Military Sexual Slavery in Wartime*, *supra* note 6, at paras. 12-18.

21. See *id.* paras. 33-34.

struggle for independence.²² More recently, there have been campaigns of mass rape in Rwanda,²³ El Salvador, Guatemala,²⁴ Liberia²⁵ and the former Yugoslavia.²⁶

B. Theories on the Use of Rape and Sexual Slavery in War

Ruth Seifert²⁷ has identified five preliminary theories on why rape is a pervasive and effective weapon in war.²⁸ First, rape is traditionally viewed as an inherent and inevitable part of war.²⁹ Second, sexual violence is perceived as a means of communication between men.³⁰ As Seifert explains: "[R]ape can be considered the final symbolic expression of the humiliation of the male opponent . . . the rape of women carries an additional message: it communicates from man to man . . . that the men around the women in question are not able to protect 'their' women."³¹ Third, military units traditionally join images of power with ideals of masculinity.³² Within this constructed culture, feelings of compassion and empathy are not permitted, violence is glorified and an inclination to rape results.³³ Fourth, rape is an effective method of isolating

22. See Robin Morgan, *Isolated Incidents*, MS. MAG., 1 (Mar.-Apr. 1993).

23. See Sam Kiley, *Prosecutor of War Crimes to Pursue Rapists*, THE TIMES, Oct. 15, 1996.

24. See Adrienne Aron et al., *The Gender-Specific Terror of El Salvador and Guatemala: Post-Traumatic Stress Disorder in Central American Refugee Women*, 14 WOMEN'S STUD. INT'L F. 37 (1991).

25. See *Liberia: Women and Children Gravely Mistreated*, PHYSICIANS FOR HUM. RTS., Summer-Fall 1991, at 3.

26. See Chavez, *supra* note 9, at para. 9.

27. Seifert is an assistant professor at the German Federal Army's Institute for Social Science.

28. See Seifert, *supra* note 7, at 58.

29. See *id.* at 58. Seifert explains:

War is a ritualized, finely regulated game. I use the word "game"—a strange word given the lethal context because behavior in war follows specific "rules of the game" (one of the reasons the military hesitates to intervene in Yugoslavia is that it would be dealing with an enemy that is not prepared to recognize these rules) When looking back through history we find much to suggest that within this ritual one rule of the game has always been that violence against women in the conquered territory is conceded to the victor during the immediate postwar period.

Id.

30. See *id.* at 59.

31. *Id.*

32. See *id.*

33. See *id.* at 62. Seifert determines:

[W]estern culture is characterized by its mixture of violence with eroticism or sexuality. Language is revealing here: a "conquest" is made both on the battlefield and in the bedroom; the Germans' invasion of Belgium at the beginning of World War I was described in the English press as the "rape of Belgium," just as the Iraqi invasion of Kuwait was described as

and humiliating women and men of the same culture.³⁴ This isolation achieves effective genocide as it impregnates women with the enemy's issue, and, in some cultures, may mark women as "spoiled" and unsuitable for traditional marriage and family life.³⁵ The final theory maintains that mass rape occurs because of a deeply rooted contempt for women that manifests itself in times of crisis.³⁶ Combatants recognize that they can easily dehumanize women in wartime, thus encouraging mass rape and sexual slavery,³⁷ because the necessary animosity against women previously existed.

Each of these sources of rape must be constantly attacked. The prevalence of sexual violence against women in peacetime illustrates that the issues present in war are not isolated to that context. Rape, committed during war or peacetime, is a cruel and dehumanizing experience that must be combated and punished.

II. Ongoing Activities to Reduce the Occurrence of Sexual Violence in War

A. Unifying the Fight Against Rape and Sexual Slavery in Peace and During Armed Conflict

Catharine MacKinnon argues that neither international nor domestic law will individually eradicate violence against women.³⁸ She identifies women all over the world who are already organizing at a local level, and explains that this movement, in concert with national and international support, is the most effective method of demanding, and eventually gaining, equal treatment for women.³⁹ She remarks:

It starts close to home. African women oppose genital mutilation. Philippine, Thai, Japanese, and Swedish women organize against the sex trade. Women in Papua New Guinea, the United States, and workers at the United Nations resist sex-

the "rape of Kuwait"; a weapon is called the "soldier's bride." The list of images that link power and masculine sexuality could be continued indefinitely.

Id.

34. See *id.* at 60.

35. See *id.* at 59.

36. See *id.* at 65.

37. See *infra* note 42 and accompanying text (discussing the employment of imagery to reduce the enemy to something less than human and thereby foster violence against the enemy).

38. See Catharine A. MacKinnon, *Crimes of War, Crimes of Peace*, 4 UCLA WOMEN'S L.J. 59, 71 (1993).

39. See *id.* at 78.

ual harassment. Brazilian and Italian women protest domestic battery and "honor" as a male excuse for killing them. Indian women protest "dowry" and "suttee" as a male excuse for killing them. American women protest domestic battery and romantic love as an excuse for killing them. Canadian women protest the use of "feminism" as a male excuse for killing them. Women everywhere rise up against rape, even in cultures where women have recently been regarded as chattel.⁴⁰

MacKinnon proposes remedying the insufficient enforcement of international human rights documents relating to women by grounding them in the global women's movement against gender inequality and applying them in peace and war.⁴¹ Through this approach, international documents will compliment and reinforce the movement already occurring around the world rather than acting in isolation or perhaps in conflict with women's goals locally.

The U.N., governments and organizations have an opportunity to support this movement by making a commitment to raising the status of women and by not tolerating sexual violence.⁴² The ensuing discussion presents some methods available to organizations and institutions to deter and prevent sexual violence against women during armed conflict. Before armed conflict occurs, education and training must be pursued locally, nationally and internationally. When armed conflict arises, effective methods of reporting and intervening on behalf of women are necessary. Following episodes of systematic sexual violence, domestic and international courts must hold perpetrators accountable. Some of the suggestions are necessarily abstract because governments and military units must find the most effective approaches to educating and training civilians and soldiers that directly counter the negative perception of women in some countries.

40. *Id.*

41. *See id.* at 77.

42. Judge Richard Goldstone, former chief war crimes prosecutor, identified that the ability to commit human rights violations lay in the dehumanization of the enemy, basically demonizing the victim. *See* Thom Shanker, *Judge Richard Goldstone: Chief War Crimes Prosecutor*, CHI. TRIB., Sept. 29, 1996, at 3. If women are dehumanized prior to war through policies of exclusion and inequality, it is much easier to rationalize the use of sexual violence, even against neighbors, when it is steeped in political rhetoric.

*B. Increased Participation of Women in United Nations
Departments*⁴³

As a preliminary matter, it is necessary to recognize that women have not participated meaningfully in the discussion or debate surrounding the development of international human rights standards.⁴⁴ Not surprisingly, the violence inflicted upon women during armed conflict did not receive adequate attention. For instance, although the rape of thousands of women in World War II, Vietnam, and the Bangladesh-Pakistani war was well-documented, no one was ever tried for rape by an international court.⁴⁵ The decision not to prosecute sex crimes as separate war crimes created a situation in which the gravity of the acts was largely forgotten.⁴⁶

The adoption of the Women's Convention⁴⁷ focused interest on the issues facing women in domestic and international conflicts for the first time.⁴⁸ Although the Convention's adoption was a positive development in the international recognition of women's rights, the fact that there is a separate document recognizing women's human rights highlights the relegation of women's issues to a separate and distinct area of international law. Women's rights must be made an integral part of all human rights documents because recognition of the female experience must be considered an inherent part of the human experience.

In addition, women must be represented throughout departments of the U.N. in order to enforce and continue developing a

43. This section does not suggest that men are not interested or capable of ensuring the protection of the rights of women. It simply recognizes that people are more inclined to protect what is similar to their experience rather than what is not known. See *supra* note 5 and accompanying text (explaining that since human rights law was developed predominantly by men, violations typical to the female experience were not identified or condemned).

44. See Hernández-Truyol, *supra* note 5, at 610-11. Hernández-Truyol explains that women, because of their gender, were excluded from representative positions in international legal institutions such as the United Nations, intergovernmental organizations and most non-governmental organizations. See *id.* at 610 n.10. Due to lack of input and virtual invisibility of women in human rights development, gender-based abuses received insufficient condemnation. See *id.* at 611.

45. See Ray, *supra* note 14, at 796-98.

46. See Ni Aolain, *supra* note 14, at 903 (explaining that although evidence of sexual violence was entered at the Nuremberg and Tokyo tribunals, its low position on the hierarchy of crimes prosecuted resulted in minimizing the significance of these events).

47. See *supra* note 10 (noting an obligation on all Convention signatories to eradicate gender inequality).

48. See Hernández-Truyol, *supra* note 5, at 611 (identifying the significance of the Women's Convention as a catalyst for the international women's rights movement).

meaningful effort to prevent violence against women during armed conflict.⁴⁹ Choosing women to represent the U.N. on international matters as special rapporteurs or fact-finders, giving women the opportunity to formulate alternative methods of international dispute resolution and deferring to female expertise on matters pertaining to women will generate new and perhaps more effective approaches to both women's issues and international human rights discourse.

C. Commitment to Educating Civilian and Military Populations on the Rights of Women during Armed Conflict

1. Civilian Populations

A major obstacle to eliminating sexual violence during warfare is our inability to control sexual violence in peacetime societies.⁵⁰ Until all nations vigorously condemn and prosecute rape and sexual slavery as unacceptable acts at all times, combatants likely will not consider such acts committed during armed conflict as a serious violation of international human rights law. The U.N. and other national and international organizations must affirmatively pursue educational campaigns on the occurrence and unacceptability of rape and sexual slavery.

State parties to the Torture Convention⁵¹ and Slavery Convention⁵² are obligated to distribute information to enlisted soldiers and conduct educational campaigns condemning sexual violence. These campaigns may be enhanced if countries not party to these conventions commit to implementing educational programs,⁵³ pursuant to the Declaration on the Elimination of Vio-

49. See Ni Aolain, *supra* note 14, at 903 (arguing that placing gender violence high on an agenda of international accountability facilitates its profile and significance as a human rights violation). For a related discussion, see *supra* note 5.

50. See *State Responses to Rape: Current Status and Needed Improvements*, WOMEN, LAW & DEV. INT'L [hereinafter *State Responses to Rape*].

51. See *infra* note 123 (citing the requirements placed on countries that are parties to the Torture Convention).

52. See *supra* note 12 (identifying the conditions countries must meet to be in compliance with the Slavery Convention).

53. "The United Nations High Commissioner on Refugees, [hereinafter UNHCR] Executive Committee . . . urges States to develop and implement training programmes aimed at promoting respect by members of military forces of the right of every individual, at all times and under all circumstances, to security of person, including protection from sexual violence." Chavez, *supra* note 9, at para. 82.

lence Against Women.⁵⁴ Acknowledging adherence to international treaty obligations alone may go a long way in developing the credibility and authority of international law.

Further, U.N. development and dissemination of materials on sexual violence to enlisted soldiers would begin to place women's human rights in a global context, connecting the work of local groups to domestic standards and international law.⁵⁵ The materials could be used during public information campaigns organized by individual governments, non-governmental organizations (NGOs) or community activists. U.N. support for civilian training would also advance international standards prohibiting sexual violence by reinforcing the notion that women are equal to men in status and in the right to bodily integrity.⁵⁶ Consistent and meaningful global education will require financial backing; therefore, the U.N. must urge governments to commit resources to educating women and men on their inherent equality. Needless to say, the U.N. must also commit resources to this end.

2. Military Education and Training

Educating and training military personnel to recognize and condemn human rights violations against women may seem an unrealistic feat for two reasons. First, war is predicated on the use of violence and its resultant suffering.⁵⁷ Because of this, violence in war is often fostered by notions that the enemy is either inhuman or otherwise unworthy of traditional moral restraint.⁵⁸ Nonethe-

54. See *supra* note 10 (discussing the Declaration on the Elimination of Violence Against Women).

55. The U.N. already recognizes the value of education in combating sexual violence. In 1995 it officially mandated the use of educational campaigns to advance the protection of refugees from rape. See UNHCR, *SEXUAL VIOLENCE AGAINST REFUGEES: GUIDELINES ON PREVENTION AND RESPONSE* (1995) [hereinafter *REFUGEE GUIDELINES*]. The UNHCR suggests wide dissemination of pamphlets or handbooks covering topics such as the equal right of women to bodily integrity, national and international laws prohibiting sexual violence, sanctions and penalties associated with acts of sexual violence, the causes and consequences of sexual violence, and how and where to report instances of sexual violence, especially if occurring on a national or systematic level. See *id.*

56. See *id.* at 23-24. The *REFUGEE GUIDELINES*, although pertaining to refugee camps and surrounding areas, promote the training of civilians and workers so that they understand the rights of women and can report or otherwise manage instances of sexual violence. See *id.* at 24.

57. See Michael D. Diederich, Jr., "Law of War" and Ecology—A Proposal for a Workable Approach to Protecting the Environment Through the Law of War, 136 MIL. L. REV. 137, 138 (1992) (outlining the ecological and environmental consequences of war, and relating them to the assumptions of waging war).

58. See *id.*; see also *supra* note 42 (explaining Judge Goldstone's belief that human rights could not occur absent this phenomenon).

less, the ratification by many countries of treaties assigning minimum standards of conduct in warfare indicates that order is not only desirable, but possible if governments and military units require a commitment to the body of international law.⁵⁹

Second, women are often viewed as both the cause of⁶⁰ and the prizes of war.⁶¹ Females lose all rights previously recognized because their bodies become battlegrounds and providers of military "needs." Throughout history, military units established brothels in base towns in the belief that it boosted the morale of soldiers.⁶² Although often viewed as voluntary, it is usually the economic necessity of the women or physical violence by the occupying army that forces women to be prostituted.⁶³ Because of this misperception, training that expresses the link between military force and sexual violence is essential. Educating military units about the establishment of brothels and the practice of rape will work to exclude the justification of "rape camps" as a necessary evil to satisfy soldiers' "needs" and define sexual violence as a weapon of war rather than as its "natural" result.

Ultimately, the goal is to produce soldiers who internalize the inherent depravity of rape and sexual slavery and who make decisions based on this knowledge.⁶⁴ Widespread sexual violence

59. See *supra* notes 2-4 and accompanying text.

60. See Catherine N. Niarchos, *Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia*, 17 HUM. RTS. Q. 649, 670 (1995) (citing Susan Gubar, "This is My Rifle, This is My Gun": World War II and the Blitz on Women, in BEHIND THE LINES: GENDER AND THE TWO WORLD WARS 227, 227-28) (Margaret R. Higonnet et al. eds., 1987)). Niarchos writes:

The enemy is portrayed as he who will rape and murder "our" women; the war effort is directed at saving "our" mothers, daughters, and wives. At the same time, women are portrayed as unworthy, untrustworthy, even as the enemy: they are seen as "irresponsible in their garrulity" (loose lips sink ships), "sinister in their silence" (the treacherous *femme fatale*), or carriers of venereal diseases.

Id.

61. See *supra* note 7 and accompanying text (explaining that women are sometimes viewed as part of the conqueror's reward and therefore become actual property claimed).

62. See Radhika Coomaraswamy, *Report on the Mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the Issue of Military Sexual Slavery in Wartime*, at para. 10, U.N. Doc. E/CN.4/1996/53/Add.1 (1996). An additional rationale used to defend military brothels is control of prostitution and reduction of the number of rape reports in the area where the army is based. THEODOR MERON, *HENRY'S WARS AND SHAKESPEARE'S LAWS: PERSPECTIVES ON THE LAW OF WAR IN THE LATER MIDDLE AGES* 112 n.179 (1993).

63. See Coomaraswamy, *supra* note 62, at para. 14.

64. Major Mark S. Martins, *Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering*, 143 MIL. L. REV. 1, 69 (1994). In his article on the rules of engagement (ROE), Major Martins analyzes attempts made to impart ROE to subordinate commanders and individual soldiers. See *id.* at 4. He argues that the

against women is deterrable if there is a unified effort at all levels of the military to prohibit its use during armed conflict.⁶⁵ The following discussion presents three tangible ways in which the military can educate its members about sexual violence.

a. Military Encouragement of Female Participation

The introduction of women into military units, especially combat units, may encourage the separation of military force and sexual violence. Gradually women may be viewed as comrades and equally competent soldiers rather than being identified as chattel or simply inferior.⁶⁶

The justification for the military exclusion of women and homosexuals from the armed forces is the ideal of masculinity itself.⁶⁷ This exclusion reinforces the notion of women as subordinate and solidifies the role of men as the stronger and more competent gender.⁶⁸

The greater propensity of fraternity members to abuse women compared to men uninvolved in fraternities further supports this conclusion.⁶⁹

Social cognitive processes in groups are modes of thinking to which we are susceptible because they arise from the way the human mind works . . . [T]hree such processes . . . are underpinnings of misogyny and abuse.⁷⁰

[1] The "outgroup homogeneity effect," the belief that all members of the outgroup (defined as not one's own group) are alike.⁷¹

[2] The natural sense of "ingroup superiority."⁷²

effective implementation of ROE requires altering the doctrine and training of United States ground forces and individual soldiers to reflect the mission of ROE. *See id.* at 5-6.

65. While analyzing different methods of training available to military units, it is important to acknowledge that one method may work for one unit but not another because of structural, cultural and other differences. Additionally, training may curb, but will not eliminate, all inappropriate acts directed at women during war because soldiers' actions cannot be constantly surveyed. *See id.* at 60-63.

66. *See* Kenneth L. Karst, *The Pursuit of Manhood and the Desegregation of the Armed Forces*, 38 UCLA L. REV. 499, 541 (1991) (arguing that the exclusion of women from United States combat units is the legacy of an Old Boys' Club that is outdated and currently hindering women's advancement by stereotyping their abilities or lack thereof).

67. *See id.* at 509.

68. *See id.* at 525.

69. *See* Chris O'Sullivan, *Fraternities and the Rape Culture*, in *TRANSFORMING A RAPE CULTURE*, 23, 25-26 (Emilie Buchwald et al. eds., 1993).

70. *Id.* at 25.

71. *Id.*

72. *Id.* at 26.

[3] "Groupthink,"⁷³ a faulty decision-making process of groups, particularly elite groups [G]roups head down the path to a really stupid decision, including an inflated belief in the group's righteousness, accompanied by an exaggerated belief in the ineptitude and unworthiness of the opposition.⁷⁴

These cognitive processes give group members a sense of invulnerability and entitlement, as well as a disdain for nonmembers that makes it easier to victimize them.⁷⁵

It is contradictory to establish organizations that discriminate on the basis of gender and yet expect the members to consider those excluded as equals, human beings.⁷⁶ Thus, the eradication of fraternities will further the goal of preventing rape.⁷⁷ Similarly, the integration of military units will be a step in breaking the barrier that makes women seem inferior and allows soldiers to justify the rape and sexual slavery of women. Additionally, successful military participation may operate as a catalyst in the positive re-evaluation of women's position and role in society.⁷⁸

b. Active Compliance with Domestic Rape Law

Most countries criminalize peacetime rape and provide some means of protection and redress to its survivors.⁷⁹ Subjecting military units to the penalties of domestic rape law will reinforce the illegality of sexual violence internationally and during armed conflict.⁸⁰ Though domestic policy may not be applicable in times of war, accountability to it will create an awareness of acceptable behavior because the consequences for violating these laws are known. Additionally, holding soldiers accountable to domestic rape law lends credibility to the prohibition of rape within the

73. *Id.* O'Sullivan credits Irving Janis at Yale with this concept. *See id.*

74. *Id.*

75. *Id.*

76. *See id.* at 29.

77. *See id.* at 30.

78. *See* Karst, *supra* note 66, at 502. Karst parallels the struggle of African-Americans who identified military service as a means to accomplish full citizenship with the struggle of women to gain equal citizenship without the option of proving themselves through military competence and sacrifice. *See id.*

79. *See State Responses to Rape, supra* note 50, at 2 (recognizing that laws are often not enforced or are too limited in structure and substance to address sexual violence effectively).

80. For instance, this year a United States military court sentenced a staff sergeant to 25 years in prison after being convicted of raping six female trainees. *See* Kathleen Kenna, *U.S. Army Sex Scandal May Be Just Beginning*, *TORONTO STAR*, May 18, 1997, at F1. This application of domestic law to the military made accountability to the public apparent.

military. In coordination, local efforts, awareness of domestic and international law and accountability at both levels may accomplish a higher level of respect, equality and safety for women.

c. Educating Military Units to Respect Women's Human Rights

The behaviors exercised and restrained during war are a reflection of the values encouraged and respected in peacetime societies.⁸¹ Educating military units, particularly higher-ranking members, about the injustice, consequences and damaging effects resulting from rape and sexual slavery is another approach to creating a connection between peacetime and wartime expectations of conduct.⁸² This would place sexual acts during war in the context of violence rather than in the context of conquest or consensual relations. Further, it would promote individual judgment and bestow upon soldiers a responsibility to make decisions that conform with both domestic and international law. With training, episodes such as those in which United Nations Protection Forces (UNPROFOR) organize women for orgies⁸³ will be shocking rather than accepted. An expectation of privacy and integrity must be established to foster the restraint and respect of soldiers toward women.⁸⁴ This must begin in peacetime societies, and be reinforced with education and training in the military.

Soldiers may be educated in many ways. Projects such as the International Military and Educational Training Program (IMET)⁸⁵ may be important vehicles for disseminating information

81. See Diederich, *supra* note 57, at 156.

82. This concept has the same rationale as that for training civilians in women's human rights: training allows for thoughtful and conscientious action. See *supra* note 55 and accompanying text (identifying the connections that may be made domestically and internationally through training civilians in human rights standards relevant to women).

83. See MacKinnon, *supra* note 38, at 67. "My correspondent observes that 'there are reports of UN troops participating in raping Muslim and Croatian women from the Serb rape/death camps.'" *Id.* at 67 n.24 (citing *Investigation Against General MacKenzie*, VECERNJI LIST, Nov. 25, 1992).

84. See *supra* notes 69-78 and accompanying text (analyzing the treatment of women by members of fraternal organizations).

85. 22 U.S.C. § 2347-2347d (1988).

The International Military and Educational Training Program is a grant program that allows military personnel from allied and friendly foreign nations to attend military schools in the United States and for U.S. forces to provide training at overseas sites with mobile education and training teams. Since 1950, the IMET program and its predecessor programs have trained over 500,000 foreign officers and enlisted personnel in areas ranging from professional military education to basic technical skills.

Captain Robert J. Kasper, Jr., *Direct Training and Military-to-Military Contact*

on human rights standards regarding women and civilians generally.⁸⁶ The IMET Program currently recognizes the need to place increased emphasis on human rights familiarization and training programs.⁸⁷ In 1991, the scope of the IMET Program was "expanded to include funding for training civilian officials who work with foreign defense establishments"⁸⁸ and "to provide training to improve military justice systems and procedures in accordance with internationally recognized human rights."⁸⁹ The reach and ability of such programs to influence the actions of military units and individual soldiers is not known, but the reinforcement of human rights standards regarding women may translate into reduced occurrences of rape and sexual slavery in wartime.⁹⁰ As women become equal in status to men, especially in soldiers' minds, sexual violence against women will be viewed as a vicious and devastating act rather than a display of military might.

Ground force trainers (GFTs)⁹¹ should also be urged to incorporate human rights training into the learning process. Prior extensive training of GFTs will allow them to "anticipate scenarios, design rehearsals, promote role-playing, and demand brief-backs."⁹² This in turn conditions soldiers to recognize potential violations of human rights. Conditioning is critical because it enables soldiers to respond to human rights violations in a prompt and proper manner instead of expecting them to rely on a personal judgment without the benefit of prior training.⁹³ Following orders is not considered a defense to the violation of human rights.⁹⁴ Pairing a soldier's duty to obey the orders of superiors with the

Programs: The CINCS' Peacetime Enablers, 42 NAVAL L. REV. 189, 193 (1995) (footnote omitted). CINC is an acronym for Commander-in-Chief. *Id.* at 189 n.1.

86. Obviously this program is not available to all countries, and would not be desired by many, but it is used as an example of coordinated efforts by separate nations to educate soldiers on uniform standards of conduct.

87. *See id.* at 192.

88. *Id.* at 193.

89. *Id.* at 193 n.16 (quoting from The Foreign Appropriations, Export Financing, and Related Programs Appropriations Act of 1991, Pub. L. No. 101-513, 104 Stat. 1979, 1997).

90. For a thorough discussion of the IMET Program, including its significance, structure and implementation, see generally Kasper, *supra* note 85.

91. A ground force trainer in this context consists of both a commander and a judge advocate vested with the authority to train soldiers in tactics of war. *See* Martins, *supra* note 64, at 21.

92. *Id.*

93. *See id.*

94. *See* Niarchos, *supra* note 60, at 683. "A claim of superior orders is not recognized as a defense, but may mitigate punishment, and immunity is not extended to heads of state or other government officials." *Id.* (footnote omitted).

ability and obligation to refuse illegal orders makes accountability acceptable when violations are committed.

It is critical that this commitment to implementing education and training not be in form only. After a three-year effort by the Pentagon to train Rwandan soldiers to recognize human rights, the atrocities against civilians continue unabated.⁹⁵ According to a senior State Department official, the training program was intended to educate the Rwandan military to observe international standards and customs of war.⁹⁶ Human rights workers, however, are concerned that the lack of U.S. condemnation of the human rights violations committed by counterinsurgency groups diminishes the credibility of the U.S. presence in Rwanda.⁹⁷ Rather than accepting that violent military operations will occur in Rwanda, the U.S. should be actively enforcing the standards it is attempting to pass on to military units. The U.S. must condemn present and future violations of international standards, and it must insist that those responsible for atrocities be held accountable for the crimes committed.

III. International Presence in Regions Where an Impending Crisis is Evident

A. *The Availability of Independent Observers in Countries Vulnerable to Armed Conflict*

The presence of independent agencies may provide an early warning in situations where an impending crisis is evident, and prevent the systematic implementation of violence against women. The ability of country observers to immediately report on the climate of a country and the military episodes that occur enables the international community to act quickly and forcefully. This is supported by representatives of many countries and organizations who voiced the importance of independent agencies to the United Nations Commission on Human Rights (UNCHR) to deter and prevent human rights violations in their own countries.⁹⁸

95. See Thomas W. Lippman, *Pentagon Training Didn't Deter Rwandan Atrocities*, WASH. POST, July 28, 1997, at 18.

96. See *id.*

97. See *id.* (citing the frustration of human rights workers attempting to aid those suffering injuries due to human rights abuses).

98. Addressing the problems concerning refugees, Sotos Zackheos of Cyprus stated "there was a need for early warning and strong preventive measures." *UN: Commission on Human Rights Approves Measures*, M2 PRESSWIRE, Apr. 9, 1997, available in LEXIS, News Library, Wires File. Barney Pityana, of the Human Rights Commission of South Africa, endorsed the importance of maintaining an

Rwanda is an example of the abuses that may occur in a country without an immediately available independent agency to provide reports to the international community. Within thirty minutes after the President of Rwanda's plane crashed on April 6, 1994, Rwandan armed forces unleashed a killing spree that ultimately resulted in the deaths of an estimated 20,000 people in one week.⁹⁹ Soon after, the Belgian government declared its intent to remove its troops from Rwanda.¹⁰⁰ With this announcement, the Rwandan forces extended the scope of their slaughter.¹⁰¹

The U.N. appointed a Special Rapporteur for Rwanda on May 25, 1994.¹⁰² Human rights field officers were arranged to assist the Special Rapporteur in persuading refugees they could go home, deterring reprisals by the new authorities, and preventing and defending against further violence.¹⁰³ The number of people murdered between the commencement of violence in Rwanda and the appointment of a Special Rapporteur to ease the suffering of Rwandans is not known. By mid-May, however, "militia leaders were calling upon their members to finish 'cleaning up' Tutsi and members of the Hutu opposition who had escaped death up to that point."¹⁰⁴

Independent observers would not have been able to entirely prevent the genocide. However, the presence of independent observers may have mitigated some of the violence because the international community would have been alerted to the crisis earlier and could have reacted immediately with force. To supplement the work of independent observers, the U.N. must adopt an internal procedure by which reports of sexual violence

impartial and independent human rights commission to monitor the events occurring in countries. *See id.* Virendra Dayal, of the National Human Rights Commission of India, cited the significant role a national institution can play in enforcing and monitoring human rights standards, but only if it had credibility through independence and integrity. *See id.* Marie-Noelle Little, of the Andean Commission of Jurists, praised the spread of independent observers. *See id.* She stressed the importance of the observers' independent status, but also felt that their application was somewhat limited. *See id.* Altaf Qadri, of the World Muslim Congress, recognized the importance of national institutions for promoting and protecting human rights, but expressed concern that they could be used for sinister purposes if controlled by unscrupulous States. *See id.*

99. *See Rwanda*, in HUMAN RIGHTS WATCH WORLD REPORT 1995: EVENTS OF 1994, at 41 (1995).

100. *See id.*

101. *See id.*

102. *See* Andrew Clapham & Meg Henry, *Peacekeeping and Human Rights in Africa and Europe*, in HONORING HUMAN RIGHTS AND KEEPING THE PEACE, 152-56 (Alice Henkin ed., 1995).

103. *See id.*

104. *Rwanda*, *supra* note 99, at 41-42.

would trigger an automatic response as soon as the problem is identified.¹⁰⁵ For example, in Somali refugee camps located in Kenya, the UNCHR decreased the incidence of rape by: organizing Somali refugees to plant electric fences and thorn bushes around camp sites to create more security for women and girls; offering human rights training to Kenyan police officers; and constructing a police post, run by Kenyan police, near the refugee camps.¹⁰⁶

B. Concerted and Sustained Pressure on Governments to Conform to Human Rights Standards Regarding Women by the U.N., NGOs, and the Media

Two examples demonstrate the effectiveness of sustained pressure on locations where military action is occurring. First, in the former Yugoslavia, the use of rape as a weapon of war prompted a rapid response by the media.¹⁰⁷ In turn, the systematic campaigns of rape documented in television reports and magazine layouts elicited international condemnation of rape as a weapon of war and rallied widespread support for intervention in the former Yugoslavia.¹⁰⁸

At a detention camp in Trnopolje in the former Yugoslavia, reports suggested that inmates were treated better than those at other camps due to the limited access granted to the International Red Cross and the media.¹⁰⁹ Atrocities still traumatized over 6,000 prisoners,¹¹⁰ but without unified international attention, many more inmates likely would have been raped, tortured or murdered.

Similarly, following widespread publicity about the incidence of rape in Somali refugee camps located in Kenya, the UNCHR and the Kenyan government made extensive efforts to improve the situation of female refugees.¹¹¹ A unified focus resulted in the reduction of sexual violence in the camps.¹¹² This direct response

105. See Binaifer Nowrojee, *Target for Retribution*, THE MUSTARD SEED 3, 5 (Summer 1997).

106. See *id.* at 5-6.

107. See Ray, *supra* note 14, at 794-95 (finding that "[a]lthough the Serbian policy of 'ethnic cleansing' included the use of concentration camps, torture, the burning of entire villages, and mass executions, it was the use of rape as a weapon of war that captured the media's eye and the world's attention." (citations omitted)).

108. See Theodor Meron, *Rape as a Crime Under International Humanitarian Law*, 8 AM. J. INT'L L. 424, 424 (1993).

109. See Stephen J. Hedges et al., *Will Justice Be Done?*, U.S. NEWS & WORLD REP., Dec. 25, 1995-Jan. 1, 1996, at 44, 46.

110. See *id.*

111. See Nowrojee, *supra* note 105, at 5.

112. See *id.* ("Follow-up visits by Human Rights Watch to the Somali refugee

may be repeated throughout regions in conflict if the U.N. and NGOs invite and follow up on the media's focus on violence against women. Further, encouraging media coverage of systematic rape and sexual slavery has the potential to evoke strong moral condemnation by the world community, as in the former Yugoslavia, and diminish the use of rape and sexual slavery as a war tactic.¹¹³ As evidenced by events in Somalia and in the former Yugoslavia, international condemnation will elicit a quicker and more effective international political and financial response to a crisis, thereby reducing the number of women subject to sexual violence.¹¹⁴

Reporting will also alert human rights organizations that have the ability to document atrocities and aid victims of violence. For instance, the work of Physicians for Human Rights, an international human rights coalition of health practitioners, conducted a preliminary investigation of a mass grave located in Ovcara, former Yugoslavia.¹¹⁵ The findings were later used by the United Nations to secure the indictments of officers responsible for the slaughter.¹¹⁶ Similarly, the on-site investigations of Physicians for Human Rights in Rwanda provided the International Criminal Tribunal for Rwanda with medical documentation of the scope and methods of murder in the region, and furnished evidence to secure indictments against the perpetrators of violence.¹¹⁷

IV. The Importance of Accountability

Without accountability, perpetrators do not feel the need to limit their practices when international human rights standards are violated. The treaties and conventions created to curb the tactics employed during armed conflict would have little weight because they would have no consequence. For this reason, the creation of two tribunals to prosecute war crimes in the former Yugoslavia and Rwanda is an important development that will solidify international standards of conduct if given credibility and

camps in 1994 and 1996 found . . . significant achievements in protection of the women refugees.").

113. On a related matter, David Scheffer, U.S. ambassador on war crime issues, cites the lack of attention paid by the media to the Rwanda tribunals as a detriment to the ability of the tribunals to gain credibility and support. See John Omicinski, *Massacres, Genocide Will Test International Will on War Crimes*, GANNETT NEWS SERV., Sept. 24, 1997, available in LEXIS, News Library, Wires File.

114. See *supra* notes 107-112 and accompanying text.

115. See PHYSICIANS FOR HUMAN RIGHTS, *Indictments of War Criminals in the Former Yugoslavia*, in ANNUAL REPORT 1995, at 5 (1995).

116. See *id.*

117. See *id.* at 6-7.

support. This Part explains the need for accountability.¹¹⁸ It examines how sex crimes were included in the jurisdiction of the tribunals,¹¹⁹ and the effort and ability of the tribunals to advance the prohibition of sexual violence against women.¹²⁰

A. Rape and Sexual Slavery as Human Rights Violations

*1. International Humanitarian Law*¹²¹

The specific prohibition of the crime of rape is found in the Geneva Convention,¹²² and in Articles 75.2 and 76.1 of Protocol I.¹²³ Unfortunately, under both documents sex crimes are characterized as a crime against a woman's honor rather than a violent crime against her body.¹²⁴ Identifying rape and sexual slavery as crimes against honor is problematic for many reasons.¹²⁵ One of the most important is that this characterization separates sex crimes from other acts of torture. Unlike the definition of torture which focuses on physical suffering, rape and sexual slavery are defined by a denigration in social status encompassed in the concept of honor. Placed in this context, rape seems to be a minor offense compared to other acts of torture.¹²⁶

118. See *infra* notes 121-135 and accompanying text.

119. See *infra* notes 136-160 and accompanying text.

120. See *infra* notes 161-192 and accompanying text.

121. Humanitarian law applies only during periods of armed conflict. See JEAN PICTET, *DEVELOPMENT AND PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW* 1-3 (1985).

122. The Geneva Convention states that "women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault." See *supra* note 3. Article 147 of the Geneva Convention defines "grave breaches" of the Convention as "those involving any of the following acts . . . willful killing, torture or inhuman treatment, . . . willfully causing great suffering or serious injury to body or health . . ." See *supra* note 3.

123. Article 75.2 of Protocol I provides that threats and outrages against personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault are prohibited at any time whether committed by civilian or military agents. See *supra* note 3. Article 76.1 of the same Convention states, "Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault." See *supra* note 3.

124. See *supra* notes 120-121.

125. See Niarchos, *supra* note 60, at 674.

126. See *id.* Niarchos explains, "[R]eality and the woman's true injury are sacrificed: rape begins to look like seduction with 'just a little persuading' rather than a massive and brutal assault on the body and psyche." *Id.*

2. International Human Rights Law¹²⁷

International human rights instruments also prohibit rape and sexual slavery, albeit indirectly in some cases. The Genocide Convention¹²⁸ prohibits the targeting of victims based on their nationality, ethnicity, race or religious beliefs and holds states and individuals accountable for breaches of the Convention. It defines genocidal acts as:

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group such as:

- (a) Killing members of the group
- (b) Causing serious bodily or mental harm to members of the group
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part¹²⁹

Under this document, raping women of a certain nationality or ethnicity would be considered an act of genocide if rape is intended to destroy the group. The Torture Convention proscribes any act deliberately inflicted on a discriminatory basis to cause severe pain or suffering sanctioned by a public official.¹³⁰ The Convention creates an agreement between state parties to:

ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement, personnel, civil or military, . . . public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.¹³¹

Although these Conventions may seem uninclusive, they are instruments that can be interpreted to reflect the experiences of women in war.

3. The Gravity of Accounting for Past Sex Crimes

Some women's rights activists believe that the state-condoned atrocities committed in the former Yugoslavia and Rwanda would not have occurred had the Japanese been held accountable for

127. Human rights law generally applies during peacetime. See PICTET, *supra* note 121, at 3.

128. Genocide is defined in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide. See *supra* note 12.

129. *Id.*

130. See Article 10.1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. (No. 51), U.N. Doc. A/39/51 (1984).

131. *Id.*

sexual slavery in World War II.¹³² Instead, the Allies' postwar Tokyo war crimes tribunal largely ignored sexual crimes, especially sexual slavery, by the Japanese military.¹³³ Today female survivors of sexual slavery in World War II are demanding acknowledgment of the issue, and are calling upon the Japanese government to take legal responsibility for its actions in World War II.¹³⁴ While prosecuting military employment of rape and sexual slavery in World War II may not eradicate its widespread use today, holding leaders accountable for sex crimes may confer upon present military units a knowledge of possible future accountability. This in turn may result in careful consideration prior to the use of calculated systematic sex crimes as a weapon of war.

A representative of the U.N. Protection Force (UNPROFOR) observed the skepticism of local organizers on all sides of the Yugoslavian conflict as to the power of the international community to hold them accountable for their actions during the war. He states:

In Belgrade and Zagre [former Yugoslavia], they usually preserved the diplomatic niceties and kept straight faces, but often the sneer around the table was nearly audible. In less sophisticated circles, when we spoke directly with those we knew had been the instigators and warned them that justice would some day come, the local establishment and its forces of law and order often snickered aloud.¹³⁵

If accountability becomes an expected and inevitable occurrence, members of the military will be less likely to scoff at those attempting to implement international standards of order, and

132. See Gene Kramer, *Groups Fight Atrocities on Women*, CHI. TRIB., Sept. 29, 1996, at 8 (describing the struggle to gain legal recognition of the sex crimes committed against women by the Japanese military).

133. See *id.*

134. The Government of Japan admits no legal responsibility for sexual slavery, arguing that the current applicable human rights documents did not exist during World War II and therefore should not be applicable to past Japanese wartime acts. See Coomaraswamy, *supra* note 62, at para. 96. The Secretary General and the Special Rapporteur on sexual slavery by the Japanese military contend that prohibitions against sexual slavery are a part of customary international law, and as such States may be held accountable for violations even if they are not signatories to specific conventions. See *id.* at para. 97. Japan does recognize a moral obligation to the survivors of sexual slavery and has created the Asian Peace and Friendship Fund for Women to compensate survivors for the torture they endured during World War II. See *id.* at para. 131. Many survivors are refusing to accept money from this fund as they are waiting for a legal acknowledgment of the illegality of Japan's acts during World War II. See Kramer, *supra* note 132, at 8.

135. See Cedric Thornberry, *Saving the War Crimes Tribunal: Bosnia-Herzegovina*, FOREIGN POL. 72, 77 (Sept. 1996).

more likely to adhere to those standards to avoid future prison sentences.

B. War Crimes Tribunals in Rwanda and Yugoslavia

1. Tribunal Jurisdiction

On February 22, 1993, the U.N. Security Council passed Resolution 808 which established an international tribunal "for the prosecution of persons responsible for serious violations of international humanitarian law committed in the former Yugoslavia since 1991."¹³⁶ The Secretary-General determined that the tribunal would only apply rules that were specifically acknowledged as a part of customary international law so that no state could argue it was excluded from the standards of specific conventions.¹³⁷ The Secretary-General declared international customary law to include the Geneva Conventions of 12 August 1949 for the Protection of War Victims;¹³⁸ the Hague Convention Respecting the Laws and Customs of War on Land;¹³⁹ the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948;¹⁴⁰ and the Charter and Judgment of the International Military Tribunal of 8 August 1945.¹⁴¹

While responding to the challenge of jurisdiction posed by Dusko Tadic's counsel, the International Criminal Tribunal for the Former Yugoslavia (ICTY) explained:

Crimes against humanity are acts committed in the course of wholesale and systematic violation of life and liberty The International Military Tribunal, operating under the London Charter, declared that the Charter's provisions limited the Tribunal to consider only those crimes against humanity

136. S.C. Res. 827, U.N. SCOR, 48th Sess., 3175th mtg., U.N. Doc. S/RES/808 (1993).

137. See Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808, U.N. SCOR, 48th Sess., para. 34. See also *supra* note 134 (discussing the refusal of Japan to admit liability for sexual slavery during WWII because it did not recognize the applicable international law).

138. See *supra* note 3 for citation. The Geneva Conventions give rise to "grave breaches," which are war crimes under international law and which create individual liability for violations and a corresponding duty to prosecute by states. Michael Scharf, *The Letter of the Law: The Scope of the International Legal Obligation to Prosecute Human Rights Crimes*, 59 LAW & CONTEMP. PROBS., 41, 43 (1996).

139. See *supra* note 2 for citation.

140. See *supra* note 12 for citation. The Genocide Convention obligates states to prosecute any person responsible for the implementation of genocide. See Scharf, *supra* note 138, at 44.

141. See *supra* note 10 for citation.

which were committed in the execution of or in connection with crimes against peace and war crimes. The Allied Control Council, in its Law No. 10, removed this limitation so that the present Tribunal has jurisdiction to try all crimes against humanity as long known and understood under the general principles of criminal law.¹⁴²

Interpreting crimes against humanity to include crimes experienced mainly by women was a first step in the recognition of gender within international jurisprudence.

2. Creating the Rules of Procedure and Evidence for the Ad Hoc Tribunal on the Former Yugoslavia and Transferring Its Structure to Rwanda

The International Criminal Tribunals organized to prosecute war crimes and crimes against humanity in the former Yugoslavia and Rwanda are the first ad hoc tribunals since Nuremberg and Tokyo.¹⁴³ The significance of the tribunals is self-evident; although their ability to affect how war is waged is unknown, they are encouraging. These tribunals mark the first time sex crimes have been tried in an international court under the auspices of the United Nations. Including sex crimes in the substantive definition of criminal offenses triable under the Statute of the International Tribunal received significant attention¹⁴⁴ due to the exclusion of crimes committed predominantly against women in relevant human rights documents.¹⁴⁵ Article 5 of the Statute specifically recognizes rape as a crime against humanity.¹⁴⁶ The acknowledgment of rape during armed conflict alone is a condemnation of its occurrence. It means that rape and sexual slavery can no longer be considered the prize in war or the inevitable result of war. They are crimes that will not be tolerated. Upon the systematic execution of rape, the international community will have the legal ability, and the moral responsibility, to act and prosecute the perpetrators.

Significantly, the Tribunal acknowledged the difficulty in prosecuting defendants because of the fear, humiliation and pain

142. Prosecutor v. Dusko Tadic, Case No. No. IT-94-I-T, U.N. Int'l Crim. Tribunal for the Former Yugo., para. 79 (1995) (decision on the defense motion).

143. See Ni Aolain, *supra* note 14, at 883.

144. See *supra* note 5 (identifying multiple articles calling attention to the lack of standards to prosecute crimes committed predominantly against women).

145. See *supra* notes 44-46 and accompanying text (identifying the lack of notice given to many violations perpetrated against women).

146. See *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, U.N. SCOR, Annex, at 38, U.N. Doc. S/25704 (1993) (adopted by U.N. SCOR, U.N. Doc. S/RES/827 (1993)).

experienced by potential victims and witnesses.¹⁴⁷ To accommodate victims and to enable the prosecution of sex crimes the Tribunal promulgated the Rules of Procedure and Evidence.¹⁴⁸ In creating the protective Rules, the Tribunal faced a dual task:

First, to respond to the lacuna in legal definition of the forms of a defilement against women as a matter of law during warfare. Second, the task of ensuring that the courtroom experience would be one that was fair to the victims of sexual violence while protecting the due process rights of any accused charged with sexual offenses.¹⁴⁹

The rules relevant to the investigation and trial of sexual offenses are encompassed in three broad categories: 1) rules enacted to protect and to further the support of victims and witnesses;¹⁵⁰ 2) general rules governing the presentation of evidence which acknowledge the sensitive nature of sexual crimes;¹⁵¹ and 3) rules relevant to the adjudication of sexual offenses specifically.¹⁵²

The Tribunal attempted to ease the difficulty involved in testifying by providing counseling and support authorized under Rule 34.¹⁵³ These resources aid the reporting and prosecution of sexual crimes by countering the hostile, invasive and unsupportive perception of the legal system that hinders witness and victim participation.¹⁵⁴ Rule 69 empowers the Court to deny the publication of victim or witness identity.¹⁵⁵ This rule acknowledges the reluctance many women have to testify before a world audience that may shun them because of what they have suffered or exploit their traumatic experiences.¹⁵⁶

147. On May 3, 1996, prosecutors dropped a rape charge against Bosnian Serb paramilitary Dusko Tadic after an alleged victim refused to testify for fear of harm to herself or her family. *UN Prosecutor Drops Charge Against Serb*, REUTERS WORLD SERV., May 3, 1996, available in LEXIS, Nexis Library, Wires File. Despite confidentiality and protection under the new rules, this situation illustrates the immense obstacle of gathering enough women to testify about their experiences of rape and sexual slavery to secure a criminal conviction.

148. Article 15 of the Statute of the International Tribunal gives rise to the Rules of Procedure and Evidence. "The judges of the International Tribunal shall adopt rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters." *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, *supra* note 146, at para. 84.

149. Ni Aolain, *supra* note 14, at 886.

150. *See id.* at 892.

151. *See id.*

152. *See id.*

153. *See id.*

154. *See id.* at 893.

155. *See id.* at 894.

156. *See Report on the Situation of Human Rights in the Territory of the Former*

Rule 90(a) allows for testimony by deposition in exceptional circumstances.¹⁵⁷ This exception creates another route for women who would not otherwise testify, and once again encourages women to aid in the prosecution of war criminals.¹⁵⁸ Rule 75(c) authorizes the court to control questioning so that witnesses will not be harassed or intimidated while testifying.¹⁵⁹ This rule again counters the perception of courts as hostile, and limits the ability of defense lawyers to attempt to base rape trials on the victim's alleged behavior.¹⁶⁰

Rule 93 accommodates the need to admit evidence of widespread and systematic criminal patterns by an individual to expand liability beyond the limited number of witnesses willing or able to testify.¹⁶¹ Without this rule, many war criminals would escape prosecution or receive short sentences because those testifying could not illustrate the pattern of genocide individually. With the rule, genocidal campaigns conducted by a war criminal may be proven through newspapers, NGO reports, or similar means, as well as through testimony in court.¹⁶² Rule 101 allows evidence of aggravating circumstances during the commission of a sex crime when evaluating the proper sanctions for a criminal.¹⁶³

Incorporating rules that recognize the unique experiences of women in war and their needs in the aftermath are essential to the prosecution of war criminals. Without these procedures, women's experiences would be lumped into rules governing the torture experienced by men in war.¹⁶⁴ The uniqueness of rape and sexual slavery as crimes that traumatize women physically, mentally, emotionally, ethnically and socially necessitates their treatment as forms of torture, but as forms different from those experienced by men. Without prosecutions and convictions based on the female experience of rape and sexual slavery, the advances made in this century to recognize women's human rights would be prop-

Yugoslavia Submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights Pursuant to Commission Resolution 1992/S-1/1 of 14 August 1992, U.N. ESCOR, Comm. on Human Rights, 49th Sess., Annex II, Agenda Item 72, paras. 51-52, U.N. Doc. E/CN.4/1993/50 (1993).

157. See Ni Aolain, *supra* note 14, at 896.

158. See *id.*

159. See *id.*

160. See *id.*

161. See *id.* at 898.

162. See *id.*

163. See *id.* at 899.

164. See *supra* note 5 (explaining that since men dominated the development of human rights standards, experiences of women were not accounted for in those standards).

erly viewed as progressive theory without force of international law.

*C. Indicting, Arresting, Settling and Sentencing: Affirming
the Prohibitions Against Rape and Sexual Slavery*

1. Issues Facing the Yugoslavia Tribunal

As of the writing of this Article, only two men have been convicted of war crimes in the former Yugoslavia, and neither were charged with sex crimes.¹⁶⁵ Drazen Erdemovic admitted guilt and received a ten-year prison term,¹⁶⁶ and Dusko Tadic, found guilty of crimes against humanity including beatings and tortures in detention camps, received a twenty-year sentence.¹⁶⁷ In contrast, a German court handed down a life sentence, the longest sentence thus far against a war criminal from the former Yugoslavia.¹⁶⁸ It is not surprising that a country subject to a war crimes tribunal in the past recognized the importance of severe punishment to deter future conduct. The ICTY and the ICTR must also mandate serious penalties for war crimes if convictions in an international court are to hold any deterrent effect.

Of the seventy-eight persons currently indicted by the ICTY, only ten are being held in the Tribunal detention center.¹⁶⁹ There are many reasons for this, perhaps the most important being political.¹⁷⁰ Leaders do not want to sacrifice their own troops to arrest indicted war criminals in the former Yugoslavia. Addressing the hesitancy of countries to act, however, Judge Richard Goldstone, former Chief Prosecutor for the ICTY¹⁷¹ stated:

165. See *supra* notes 162-163 and accompanying text.

166. See *Facts on UN War Crimes Tribunal for Former Yugoslavia*, AGENCE FRANCE PRESSE, July 14, 1997, available in 1997 WL 212570.

167. See Gwynne Dyer, *Bigger Birds May Yet Sing Bosnian Reminder of How Genocide Poisons*, THE DAILY NEWS (New Plymouth), July 16, 1997, at 6, available in 1997 WL 5978840.

168. See Richard Heister, *Bosnian Serb gets life sentence for genocide*, AGENCE FRANCE PRESSE, Sept. 26, 1997, available in LEXIS, *International News*. Nikola Jorgic was given a life sentence after being convicted of 11 counts of genocide, 30 counts of homicide, and kidnapping. See *id.*

169. See *Facts on UN War Crimes Tribunal for Former Yugoslavia*, *supra* note 166, at 1.

170. See Nuala Haughey, *War Rapists May Go Unpunished*, THE IRISH TIMES, Dec. 4, 1996, at 2, available in 1996 WL 14183375 (citing a report by the LAWYERS' INTERNATIONAL FORUM FOR WOMEN'S HUMAN RIGHTS).

171. See Desmond O'Malley, *Put Human Rights Before Self-Interest*, THE IRISH TIMES, May 8, 1997, at 14. Judge Richard Goldstone left his position as the chief prosecutor for the ICTY because of the failure of international leaders to support the tribunal. See *id.* Judge Goldstone felt the victims of genocide in Bosnia "had

without being naive or callous, I don't accept that as a valid excuse. Soldiers are sent to foreign places, to inherently dangerous places. If you are going to do a job, do the job. If not, the soldiers should not be sent As long as there is going to be a callous disregard for human rights, one endorsed by international inaction, there will be no stopping this sort of conduct.¹⁷²

Unfortunately, many human rights activists have felt similarly and left the effort in the former Yugoslavia as a result of this inaction.¹⁷³

The killing of an indicted Bosnian Serb suspect in July 1997 while attempting to arrest him in Prijedor¹⁷⁴ may be another reason troops are hesitant to arrest indicted war criminals. Since this event no further arrests have occurred;¹⁷⁵ however, justice before the Tribunals requires arrests, and such unfortunate events cannot deter troops empowered with the ability to enforce international law. Allowing leaders such as Bosnian Serb Radovan Karadzic to remain free despite an indictment against him, and information about his whereabouts, is probably the biggest threat to the ICTY's credibility.¹⁷⁶

2. Issues Facing the Rwanda Tribunal

The International Criminal Tribunal on Rwanda (ICTR) is in danger of becoming an exercise that will damage rather than add to the enforcement of an international prohibition of sexual violence. Since its inception, the ICTR has been subject to widespread criticism. In February 1997, the U.N. dismissed the Rwanda tribunal's prosecutor and administrator citing "serious mismanagement and operational deficiencies."¹⁷⁷ Although the U.N. did not consider these issues to be a result of corruption¹⁷⁸

suffered a great injustice." *Id.*

172. Shanker, *supra* note 42, at 3.

173. See O'Malley, *supra* note 171, at 14. O'Malley cites the resignation of Tadeusz Mazowiecki, former Prime Minister of Poland and Special Rapporteur to the European Commission on Human Rights, after a massacre in Srebrenica did not illicit aid or effective condemnation from the international community. See *id.* Similarly, Manfred Nowak, former chairman of the U.N. working group on enforced disappearances resigned citing the lack of adequate political will to establish the fate of missing people. See *id.*

174. See AMNESTY INTERNATIONAL, *Bosnia-Herzegovina: End Lip-Service to Justice—Arrest Now!*, Dec. 11, 1997.

175. See *id.*

176. See EU/Former Yugoslavia: *Respecting Human Rights*, EUROPE INFO. SERV., July 29, 1997 at 57, available in 1997 WL 13228055.

177. U.N. *Dismisses Rwanda Tribunal's Prosecutor, Administrator*, DEUTSCHE PRESSE-AGENTUR, Feb. 26, 1997, available in LEXIS, International News.

178. See *id.*

the dismissals further delayed much needed prosecution of war criminals.

In March 1997, the Rwandan government sent a letter to the Secretary General and the U.N. Security Council voicing its concerns about the choice of Louise Arbor as Chief Prosecutor for the Courts.¹⁷⁹ Arbor is a Canadian judge who acquitted Imre Finta, a gendarme officer in Nazi-occupied Hungary during World War II, accused of shipping over 8,000 Jews to death camps in 1942.¹⁸⁰ The letter also cited her instructions to allow all applications for adjournment of proceedings, even though "the defendant's efforts at procrastination are evident and well-documented."¹⁸¹ Arbor's position as prosecutor may have further undermined the credibility of the Court, at least among Rwandans.¹⁸² Reacting to the accusations, Arbor announced a commitment to hunting down the perpetrators of atrocities.¹⁸³ However, in May 1997, Rwandan genocide survivors protested outside the war crimes tribunal demanding to know where the \$40 million already spent on the tribunal had gone, and why no trial of those charged was concluded after three years of tribunal operation.¹⁸⁴

Sexual violence, which was well-documented in Rwanda, is also a controversial issue for the ICTR. Despite the thousands of women raped during the country's genocide in 1994,¹⁸⁵ no one was indicted for rape until 1997.¹⁸⁶ Additionally, while the former Yugoslavia tribunal's prosecutors sent female/male teams to interview victims, the Rwanda tribunal offered only male interpreters, often of the same ethnic group as accused rapists.¹⁸⁷ As a result, women most likely felt reluctant to provide testimony.

179. See *Rwanda-U.N.: Crisis of Confidence Over Tribunal*, INTER PRESS SERV., Mar. 2, 1997, available in 1997 WL 7073958 [hereinafter *Crisis of Confidence*].

180. See *id.*

181. *Id.*

182. Although it may be ironic that a female judge does not seem to have the sensitivity necessary to guide the prosecution of rape and sexual slavery in Rwanda, it highlights the need for personnel who are well-educated in the politics of the countries they seek to protect.

183. See *Crisis of Confidence*, *supra* note 179.

184. *Rwandan Genocide Survivors Demonstrate Against UN War Crimes Tribunal*, AGENCE FRANCE PRESS, May 23, 1997, available in 1997 WL 2120757.

185. See *supra* note 23 (stating that the use of mass rapes was documented in several nations).

186. See *U.N.-Women: Seeking Gender Role in International Court Debate*, INTER PRESS SERVICE, Aug. 12, 1997, available in 1997 WL 13256019.

187. See *id.*

Complicating the situation further, the ICTR has yet to convict an indicted war criminal,¹⁸⁸ and domestic courts may also be hindering the functioning of the ICTR. On December 17, 1997, a Texas court refused to extradite an indicted, and formerly arrested, Rwandan suspect.¹⁸⁹ The judge held that the ICTR did not have jurisdiction over the matter, and that the evidence used to support the extradition request was not sufficient.¹⁹⁰ The U.S. government subsequently announced that it would attempt to ensure the extradition of the suspected war criminal in order to fulfill its international obligations.¹⁹¹ Nonetheless, occurrences such as this further undermine the credibility of international tribunals. It must be made clear that U.S. courts are subject to the restrictions imposed by international treaties, agreements and resolutions.¹⁹² Until indicted war criminals are arrested, the Tribunals will remain courts with the power to prosecute major war criminals, but with the will to convict only those without power.

D. The Potential for Prosecuting Sex Crimes in International Court

With the acknowledgment of rape and sexual slavery as crimes against humanity, the ability to prevent their occurrence is greatly enhanced. The creation of the Rules of Procedure and Evidence are a testament to the will of the international community. It is evident that the United Nations carefully considered the balance necessary to encourage female testimony while providing a fair trial to those indicted of sex crimes. Unfortunately, the tribunals are not being utilized to the extent possible because of the potential for political controversy and the inherent dangerousness of the task. Until the international community commits resources

188. See *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States Between 1 January and 31 December 1994*, Report of the Secretary-General, U.N. GAOR 5th Comm., 52d Sess., Agenda Item 137, para. 44, U.N. Doc. A/C.5/52/13 (1997).

189. See *Release of Elizaphan Ntakirutimana*, 30 UBUTABERA Part 2, (visited Feb. 16, 1998) <<http://persoweb.francnet.fr/~intermed>>.

190. See *id.*

191. See *id.*

192. The recognition of rape and sexual slavery as human rights violations in the international arena also necessitates their inclusion in domestic standards for political asylum. If women cannot present a petition of asylum for gender-based sexual violence in the midst of armed conflict, credibility is once again undermined. The United Nations must encourage nations to recognize rape and sexual slavery in this context.

and personnel to the prosecution of indicted war criminals, the tribunals, and international law as an extension, are in danger of becoming potentially powerful institutions that have no method of activation or means for enforcement.

Just as educating people and maintaining an international presence in zones vulnerable to armed conflict can improve the situation, prosecuting sex crimes can significantly impact the incidence of systematic rape. In unison, the three concepts can be used to create a structure that neither condones the use of sex crimes nor allows those responsible to escape punishment.

Conclusion

Deterring and preventing sexual violence during armed conflict requires unified action on a local, national and international level. This Article identified methods available to the United Nations, governments, organizations and institutions to implement programs to combat rape and sexual slavery. Part I asserts that an acknowledgment of the occurrence of rape and sexual slavery in peace and wartime, and an approach that tackles the incidence of sexual violence at both times must be developed and implemented into local, national and international action on behalf of women. Part II contends that a commitment to educating and training civilians and soldiers about human rights documents applicable to women and warfare will create expectations as to how war may be waged, and elicit condemnation when those expectations are transgressed. Part III illustrates and reinforces the crucial role independent observers play in regions where armed conflict arises, and the importance of effective methods of reporting and intervening on behalf of women. Finally, Part IV affirms the absolute necessity of holding perpetrators of systematic sexual violence accountable for their actions through international tribunals and stiff penalties.

Women across the globe are already demanding equality through local, national and international organizations. To advance the movement, national and international actors must support these local movements. There is currently an opportunity to expand the rights of women in a meaningful and global manner. The only question is whether national and international institutions will commit to their obligations under international law. We wait for a complete answer.